IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17/04/2004

Coram

The Honourable Mr. Justice D. MURUGESAN

W.P. No.10759 of 1996

1. A. Irudayanathan(deceased)
2. I. Margrate
3. Minor I. Helina Jenifer
4. Minor I. Rupino
5. Minor I. Dlip Antony ... Petitioners

(Petitioners 2 to 5
substituted in the place
of sole deceased petitioner
as per order dated 28.3.2004
in W.P.M.P. No.1119 of 2004)

-Vs-

1. The Commissioner and
Secretary to the Government,
Social Welfare Department,
Fort St. George,
Madras 9.

2. The Land Acquisition Officer/
Revenue Divisional Officer,
Nagapattinam, Quaide-Millet Dt.

3. The Collector,
Nagapattinam,
Quaide-Millet Dt.

4. Tamil Nadu State Transport
Corpn.(Kumbakonam Divn.) Ltd.,
rep. by its Managing Director,
Railway Station New Road,
Kumbakonam.
(R4 impleaded as per order
dated 17.10.2000 in W.P.M.P.
No.3089 of 2000)

5. A. Subramanian

6. S. Thirugnanam

(R5 and R6 impleaded as per
order dated 17.10.2000 in
W.P.M.P. No.4124 of 1998) ... Respondents

Petition under Article 226 of The Constitution of India,
praying to issue a writ of certiorari.

For Petitioners: Mr. V.Karthikeyan
for Mr.V.Perumal

For Respondents: Mr. M.G.H.Varadharajan,
Addl. Govt. Pleader
for R1 to R3
Mr. T.Arul Raj
for R4
N.A. - others

:O R D E R
The first petitioner, owner of an extent of 60 cents in survey No.4 6/4, Velanganni, has filed the writ petition questioning the award No.2/94 dated 16.9.1994 passed under the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). Pending writ petition, since the first petitioner died, the petitioners 2 to 5 have been impleaded as the legal heirs of the deceased first petitioner.

2. Learned counsel for the petitioners would challenge the award on the following grounds:-

(i) The petitioners are the owners of the land. However, they were not served with the notice of 5A enquiry, as admittedly the notice was served on the father of the first petitioner.
(ii) Declaration under Section 6 of the Act was made beyond the period of one year.
(iii) The award was made beyond the period of two years.

3. I have also heard Mr. M.G.H.Varadharajan, learned Additional Government Pleader appearing for the respondents 1 to 3 and Mr. T. Arul, learned counsel appearing for the fourth respondent/requisitioning body.

4. So far as the first contention is concerned, the first petitioner did not approach this Court questioning the land acquisition proceedings on the ground that the notice was not issued to him. Admittedly, the father of the first petitioner had participated in the 5A enquiry and it was not disputed that his father did not raise objection stating that he was not the owner of the land. In view of the law laid down by the Supreme Court in the decision in "MUNICIPAL COUNCIL, AHMED NAGAR & ANOTHER v. SHAH HYDER BAIG & OTHERS (A.I.R. 2000 S.C. 671), this Court will not entertain the writ petition after the award is passed. The first contention of the petitioners is liable to be rejected on the ground of laches, as they have not questioned the land acquisition proceedings.

5. So far as the second contention is concerned, notification under Section 4(1) of the Act was published on 13.3.1991. The local publication was made on 18.4.1991 and declaration under section 6 of the Act was made on 10.04.1992 i.e. within a period of one year. Hence the contention of the learned counsel for the petitioners that the declaration under Section 6 of the Act was made beyond the period of one year is factually incorrect and the same is liable to be rejected.

6. So far as the last contention is concerned, declaration under Section 6 of the Act was made on 10.4.1992. Though local publication of declaration under Section 6 of the Act was made on 18.4.1991, the enquiry was held on 1.7.1991 and the award was passed on 16.9.1994, which is certainly beyond the period of two years. However, it is to be noted that even according to the petitioners, notification under Section 4(1) of the Act was in respect of acquisition of lands belonging to two individuals in survey Nos.46/4 and 46/5. The land owner in Survey No.46/5 to an extent of 0.36.0 hectares filed W.P. No.9715 of 1991 challenging the acquisition proceedings and obtained interim stay on 16.7.1991 in W.P.M.P.No.14764 of 1991. In this context, useful reference can be made to the explanation to Section 11A of the Act. Explanation to Section 11A of the Act reads as under:-

"In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded".

This section came to be interpreted by the Supreme Court in the judgment in "SHRI ABHEY RAM & OTHERS v. UNION OF INDIA & OTHERS (A.I.R. 19 97 S.C. 2564)" and the Supreme Court has held as follows:-

"Even if anyone land owner gets stay, then the stay will count for the entire notification and the notification will not lapse against those persons who have not come to the Court."

8. In view of the said judgment, stay granted by this Court in respect of S.No.46/5 covered under the same notification would also apply to the land of the petitioners. That apart, the Supreme Court in MUNICIPAL CORPORATION OF DELHI v. LICHHO DEVI & OTHERS A.I.R. 1997(7) S.C.C. 430, while interpreting the explanation clause has held that once the stay of the proceedings was granted by this Court even only in respect of dispossession, such an order of stay would enure the stay of the entire land acquisition proceedings. In that view of the matter, the stay granted by this Court at the instance of the other owner of the land covered in the land acquisition proceedings would operate against any proceeding in respect of the petitioners also. In view of the said law laid down by the Supreme Court, the question of limitation of two years to pass the award does not arise, as the writ petition filed by the other owner of the land itself came to be disposed of only on 21.7.99 and the challenge to the land acquisition proceedings was unsuccessful even before the Supreme Court. Hence, the third contention of the petitioners is also liable to be rejected.

9. For all the above reasons, I am not inclined to accept any of the contentions of the learned counsel for the petitioners. Accordingly, the writ petition fails and the same is dismissed. No costs.

ssa.

To

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